

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Improving Safety Communications in	)	WT Docket No. 02-55
the 800 MHz Band	)	
	)	

**PETITION FOR DECLARATORY RULING**

**Mexican Concessionaires**

*Comunicaciones Digitales del Norte, S.A. de C.V.*  
c/o Patricio Ruiz

*Radio Sistemas de Tamaulipas, S.A. de C.V.*  
c/o Luis Felipe Rendon  
c/o Salvador Padilla López  
c/o Jesse Russell  
c/o Robert McAllen

*Troncatel, S.A. de C.V.*  
c/o Jaime Jiménez

*Union Agricola Regional del Norte de Tamaulipas*  
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July 29, 2016

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**PETITION FOR DECLARATORY RULING**

For reasons stated below, Petitioners hereto respectfully request the Commission to take the following actions to clarify a dispute that is delaying the implementation of the Amended Protocol on the Mexican side of the Sharing Zone along the U.S.-Mexico border:

1. A Declaratory Ruling clarifying that Sprint Corporation and/or AT&T, Inc. is obligated to compensate the reasonable costs for the rebanding or relocating of the Mexican licensees in the "Sharing Zone" along the U.S.-Mexico border, as may be required by IFT, the Mexican regulatory counterpart to the Commission, in complying with the Amended Protocol.
2. Request the U.S.-Mexico Task Force to engage in dialogue with Petitioners, IFT, Sprint Corporation, AT&T Mexico and any other party that the Task Force deems responsible for compensating and assisting implementation of the necessary transition actions of the Mexican licensees as required by IFT in complying with the Amended Protocol.

**BACKGROUND**

1. On June 8, 2012, the United States and Mexico signed an amendment to the bilateral agreement modifying the international allocation of 800 MHz Spectrum in the U.S.-Mexico border region (“Amended Protocol”),<sup>1</sup> which enables the U.S. to proceed with 800 MHz band reconfiguration along the “Sharing Zone” of the border.

2. The “Sharing Zone” spans 110 kilometers into each country along the U.S. – Mexico border.<sup>2</sup> Pursuant to the Amended Protocol, new limitations, rights and conditions are imposed on licensees operating in the 800 MHz Spectrum within the Sharing Zone on both sides of the border. To comply with the objectives of the Amended Protocol, it was anticipated that some of the incumbent operators on the Mexican side of the Sharing Zone would face relocation.

3. The Commission has primary responsibility for assuring compliance with the Protocol on the U.S. side of the border. The counterpart to the Commission in Mexico is the *Instituto Federal de Telecomunicaciones* (known as “IFETEL” or “IFT”), and it is likewise responsible for compliance with the Amended Protocol on the Mexican side of the Sharing Zone.

4. The Commission has delegated some of these oversight responsibilities to its Public Safety and Homeland Security Bureau (“PSHSB”) and the International Bureau of the FCC.

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<sup>1</sup> Protocol Between the Department of State of the United States of America and the Secretariat of Communications and Transportation of the United Mexican States Concerning the Allotment, Assignment and Use of the 806-824/851-869 MHz and 896-901/935-940 MHz Bands for Terrestrial Non-Broadcasting Radiocommunication Services Along the Common Border (June 8, 2012) (“Amended Protocol”).

<sup>2</sup> 1994 Protocol at Article I, Par.1

5. The Commission and IFT established a joint U.S. – Mexico Task Force (the “Task Force”) to monitor and coordinate transition of incumbent Mexican licensees in the Sharing Zone.

6. Full transition on the Mexican side has been delayed because of a dispute concerning the costs associated with implementing the Amended Protocol requirements. Some of the Mexican operators in the Sharing Zone (“Mexican Concessionaires” or “Mexican Licensees”) are being asked to abandon their operations within the 800 MHz to benefit other users, including AT&T’s subsidiary, AT&T Mexico.

7. The Mexican Licensees who are filing this Petition have not been compensated as is required by Sprint (and/or AT&T Mexico) for actions they will be asked to undertake to comply with the requirements of the Amended Protocol.

8. Obligations of Sprint and AT&T Mexico under the Amended Protocol are within the Commission’s purview.

### ***Standing***

9. Petitioners are licensees operating within the 800 MHz Spectrum on the Mexican side along the U.S.-Mexico border that is within the “Sharing Zone” and thus are affected by terms of the Amended Protocol. Petitioners’ licenses and businesses are to be substantially, if not completely, required to be changed by the IFT due to the Amended Protocol. The Amended Protocol requires compensation to Petitioners for the imposed changes made and to be made on them as may be required to fully implement the Amended Protocol. The compensation commitment under the Protocol has not been complied with

as it applies to Petitioners, and for that reason, this request for Declaratory Ruling is appropriate.<sup>3</sup>

10. For reasons stated below, a Commission Declaratory Ruling will clarify an important dispute that is delaying full implementation of the Amended Protocol along the U.S.-Mexico Border.

***Sprint's Obligation to Cover Transition/Relocation Expenses of Mexican Licensees in the Sharing Zone***

11. Sprint Corporation benefited from the actions required under the Amended Protocol.<sup>4</sup> In exchange for such benefits, Sprint made certain financial commitments.<sup>5</sup>

12. At the time of the Amended Protocol, Sprint obligated itself to cover the reasonable relocation costs of Mexican Incumbent licensees.<sup>6</sup>

13. NII Holdings, Inc., similar to Sprint, was also obligated to pay the transition and/or relocation expenses of licensees on the Mexican side of the Sharing Zone.<sup>7</sup>

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<sup>3</sup> The actions requested in this Petition are within the authority and interest of the Commission pursuant to its authority to issue declaratory rulings, or, in the alternative, to address informal requests for action. 47 C.F.R. § 1.2 (“The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty”); 5 U.S.C. § 554(e) (“The agency, with like effect as in the case of other orders and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty”); 47 C.F.R. § 1.41 (informal request for Commission action).

<sup>4</sup> See e.g., Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 (2004) (*Report and Order*) overall and in particular ¶¶ 329-332.

<sup>5</sup> *Id.*

<sup>6</sup> See e.g., WT Docket No. 02-55. Fifth Report and Order by PSHSB, dated April 1, 2013, ¶ 67, “It is our expectation that Mexican licensees will relocate in a timely manner, in light of U.S.-Mexico agreement in the Amended Protocol *and the commitments made by Sprint and NII to pay the reasonable costs of such relocations*. (Emphasis added). See also Amended Protocol at Article V, as interpreted by the FCC, stating, “... the Administrations shall ensure that operators or related corporate entities operating in the co-primary allotment cover all such reasonable costs of incumbent operators in Mexico that are associated with the transition to comparable facilities on the replacement channels and that are consistent with understandings agreed to by the Task Force.”). The Commission has also referenced Letter from James B. Goldstein, director - Spectrum, Sprint Nextel, to Ambassador Philip L. Verveer, Deputy Assistant Secretary of State, United States Coordinator for International Communications and Information Policy, U.S. Department of State (June 8, 2010).

<sup>7</sup> *Id.*

14. Sprint, through its subsidiary, Nextel Communications, Inc., entered into an agreement with NII Holdings, Inc. dated July 27, 2011 (the “Rebanding Agreement”). Pursuant to such Rebanding Agreement, Nextel-Mexico, a subsidiary of NII Holdings, Inc., would facilitate negotiations with the Licensees operating on the Mexican side of the Sharing Zone and paying up to the first \$18 million in costs and expenses related to such negotiations. Sprint, pursuant to such Rebanding Agreement obligated itself to pay and/or reimburse Nextel-Mexico for costs in excess of \$18 million incurred or paid by Nextel-Mexico to the Mexican licensees in the Sharing Zone associated with their rebanding and/or relocation out of the 800 MHz Spectrum.<sup>8</sup>

15. Pursuant to its commitments, Sprint held various discussions with the Petitioners culminating in a meeting on October 5, 2014 in Dallas, TX with the Petitioners. At that meeting, Sprint committed to compensate the Petitioners for their planned vacating of operations in the 800 MHz Spectrum on the Mexican side of the Sharing Zone. Petitioners agreed to the settlement amount that was communicated orally by Sprint.

### ***Breach of Agreement***

16. Two months after the Dallas meeting with Petitioners, it became public that Nextel-Mexico was being sold to AT&T. Sprint started distancing itself from the commitment it made in Dallas with Petitioners after the announcement in January 2015 that AT&T was acquiring Nextel-Mexico.

17. Nextel-Mexico was combined with AT&T’s other Mexico wireless business and is now known as “AT&T Mexico”.

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<sup>8</sup> See e.g. *NII Holdings, Inc., et al, Debtors*. Case No. 14-1611 (SCC); U.S. Bankruptcy Court, Southern Dist. N.Y., “debtor and Nextel-Mexico are jointly and severally liable to fund [and to pay] the first \$18 million in costs and expenses associated with ... its performance and its obligations under the 800 MHz Realignment Plan in Mexico.” Doc. # 724 ¶¶ 12 - 18.

18. Petitioners had submitted their documentation to Sprint as required for the negotiations for payment of the anticipated costs for rebanding and/or for relocating out of the 800 MHz Spectrum.

19. To date, Sprint has abandoned discussions with Petitioners contending that the compensation lies with AT&T Mexico as the acquirer of Nextel-Mexico.

20. AT&T has denied its assumptions of the obligation of Nextel-Mexico for compensation to the Mexican concessionaires for rebanding and/or relocating out of the 800 MHz Spectrum as required under the Amended Protocol.

#### ***Actions by IFT***

21. IFT gave time to the Mexican Concessionaires to negotiate a settlement of cost with Sprint for their rebanding and/or relocation. But, after a lack of progress, IFT concluded that it was required to clear out the Petitioners from the 800 MHz Spectrum in order to comply with the Amended Protocol. IFT gave notice of this intended action on or about February 23, 2016, but such intentions have not been carried out.

22. On information and belief, Nextel-Mexico (now AT&T Mexico) who would also be a responsible party for payment to the Mexican Concessionaires, has a conflict of interest and has influenced the actions taken by IFT concerning the Petitioners' interests in the Sharing Zone.

#### ***Injunction Against IFT***

23. On or about March 17, 2016, Petitioners filed for an injunction (*amparo*) in the Mexican courts against the intended actions of IFT to comply with the Amended Protocol, because there had not been any payment as required under the Amended

Protocol, and under Sprint's oral contract with Petitioners, as well as IFT's failure to comply with other procedural requirements.

24. The lack of clarity under the Amended Protocol as to responsibility for paying the costs projected and incurred by the Mexican incumbent licensees has resulted in the filers of this Petition to file an *amparo* (injunction) against their intended removal from the 800 MHz Spectrum.

25. As a result of the above legal action, Petitioners continue to have right to operate within the 800 MHz Spectrum on the Mexican side of the Sharing Zone and therefore, there will be continued delays and disputes in implementing the Amended Protocol unless the Commission clarifies Sprint's obligations under the Amended Protocol as requested herein.

***Petitioner's Consent to Cooperate to Meet Commission and Related U.S. Demands***

26. Petitioners are aware that U.S. officials are frustrated with the lack of full implementation of the Amended Protocol as it applies to the Mexican side of the Sharing Zone.<sup>9</sup>

27. Petitioners have made it clear to IFT and Sprint that Petitioners will cooperate in any way necessary that promotes implementing the Amended Protocol, but in turn Petitioners require compensation for abandoning operations with the 800 MHz Spectrum as is being proposed by IFT to comply with the Amended Protocol.

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<sup>9</sup> See letter addressed to Secretary of State John Kerry dated April 28, 2015, signed by a majority of the U.S. Senators who stat that they "are deeply concerned over the ongoing delay in the Mexican Government implementing the Revised Protocol ... and ... are at a standstill waiting for the Mexican Regulatory Agency, IFT, to direct certain Mexican licensees to ... relocate ...". See also Letter dated April 27, 2015 addressed to the Commission and the State Department from the Association of Public-Safety Communications Officials - International and other law enforcement and public safety groups complaining about the lack of Mexico's clearing out Mexico licensees from the 800 MHz Sharing Zone to implement the Amended Protocol.



### ***Conclusion***

28. Based on the clear understanding of the Commission, Sprint and/or Nextel-Mexico (AT&T Mexico) should pay the reasonable costs of Petitioners, who as Mexican Concessionaires legitimately operating in the 800 MHz Spectrum are now being requested to vacate that Spectrum to accommodate and comply with the Amended Protocol. It is in the interest of the Commission and IFT to have the Commission issue a Declaratory Ruling/Order as requested herein and also request the Task Force, and if necessary PSHSB, and/or the FCC International Bureau to assist in bringing about a resolution.

Therefore, the Commission is respectfully requested to issue a Declaratory Ruling that:

Sprint is to comply with its agreement to pay the costs of the incumbent licensees in Mexico that are required to vacate the 800 MHz Spectrum pursuant to the Amended Protocol, unless Sprint is able to show that such obligation has been legally delegated and accepted by AT&T pursuant to its acquisition of Nextel-Mexico or otherwise.

Such declaratory ruling should also request the U.S.-Mexico Task Force to engage itself in resolving the dispute herein raised by Petitioners.

Respectfully submitted,

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